

Hearing Date: August 9, 2017 at 9:30 a.m.

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> , Debtors. ¹	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, Debtor.	No. 17 BK 3283
In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO SALES TAX FINANCING CORPORATION, Debtor.	No. 17 BK 3284 This filing relates to: Nos. 17 BK 3283 and 17 BK 3284

**AMBAC ASSURANCE CORPORATION'S RESERVATION OF RIGHTS REGARDING
THE REVISED MOTION OF DEBTORS FOR ORDER APPROVING STIPULATION
PROVIDING PROCEDURE TO RESOLVE COMMONWEALTH-COFINA DISPUTE**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284 (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

Plaintiff Ambac Assurance Corporation (“Ambac”), by and through its attorneys, Ferraiuoli LLC and Milbank, Tweed, Hadley & McCloy LLP, hereby submits this reservation of rights regarding the Revised Motion of Debtors for Order Approving Stipulation Providing Procedure to Resolve Commonwealth-COFINA Dispute (Dkt. No. 718)¹ (the “Revised Protocol Motion”). In support of its reservation of rights, Ambac respectfully submits as follows:

RESERVATION OF RIGHTS

1. When the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) filed its initial Motion of Debtors for Order Approving Procedures to Resolve Commonwealth-COFINA Dispute (Dkt. No. 303) (the “Initial Protocol Motion”), Ambac raised serious constitutional and other concerns, especially with regard to the purported authorization of the agent to unilaterally compromise Ambac’s property rights. (Dkt. No. 375 ¶¶ 16-20.) In a spirit of pragmatism and cooperation, however, Ambac outlined certain changes to the form of the protocol that could potentially resolve those concerns. (*Id.* ¶ 8 & Ex. 1.)

2. Since the Court denied the Initial Protocol Motion without prejudice at the omnibus hearing on June 28, 2017 (Dkt. No. 544), Ambac has continued to work cooperatively with the Oversight Board and other creditors to develop an acceptable form of protocol. Ambac has devoted countless hours to conversations with all other interested parties in an effort to improve the structure and text of the protocol, and with other COFINA creditors concerning the identification of the COFINA agent and his or her counsel. Ambac has invested significant time and effort, as has the Oversight Board and other Commonwealth and COFINA creditors, to create a mechanism for resolving one of the largest disputes facing the Commonwealth and COFINA, an important step in resolving these Title III cases. Ambac is optimistic that the

¹ All docket references herein are to No. 17 BK 3283.

current form of protocol can facilitate an efficient resolution of the Commonwealth-COFINA Dispute while protecting the due process rights of the affected parties.

3. At the same time, however, Ambac's support for the proposed agency structure comes with reservations, especially with respect to the identity of the COFINA agent and selected counsel. Although the protocol as submitted to the Court for approval left the identity of the agent blank, all of the significant COFINA creditors had, as a result of herculean efforts across the board, reached consensus on an appropriate agent and law firm. It was no small task for all of the COFINA senior and subordinated bondholders and the relevant monoline insurers to agree on the agent and law firm. The consensus was reached based on the combined strengths of the proposed agent and her counsel working together as a team. Unfortunately, after previously indicating agreement to the identified counsel, at the eleventh hour, Governor Rosselló and the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") chose to interfere with that consensus, and asserted a purported conflict disqualifying the selected legal counsel.

4. The Governor and AAFAF have refused to waive the conflict. There is no rational reason for their behavior other than a desire to interfere with COFINA creditors' selection of an agent to represent them effectively in litigation against the Commonwealth of Puerto Rico. This is the very kind of favoring of the Commonwealth over COFINA, due to the Commonwealth's and AAFAF's inherent conflict related to this issue, that the protocol is intended to address. The Governor and AAFAF should not be allowed to tip the scales by denying COFINA creditors the right to appoint the agent and counsel of their choosing.

5. The Governor's and AAFAF's actions are particularly disturbing to Ambac, which has repeatedly refrained from objecting to the retention by the Governor and AAFAF of

Ambac's former advisors, including specifically Rothschild & Co. ("Rothschild") and Jorge San Miguel, a managing director of Ankura Consulting Group ("Ankura"). Ambac has continuously approached these restructurings with a spirit of cooperation and a strong belief that all parties have a shared interest in finding a mutually-agreeable solution. The challenges facing the Commonwealth, its instrumentalities and its creditors are significant, and top tier advisors will facilitate solutions. Conflict waivers are a typical and indeed essential feature of the restructuring market. Given the repeat appearances certain advisors make in restructuring matters, it would be difficult if not impossible to resolve many matters without waivers.

6. Before Rothschild, and specifically Todd Snyder, was retained by the Commonwealth, Rothschild, with Mr. Snyder at the lead, served as financial advisor to Ambac's counsel in connection with Puerto Rico's financial crisis—an engagement in which Rothschild was privy to, and participated in developing, Ambac's legal and strategic thinking regarding its Puerto Rico exposures. Similarly, Ankura's Senior Managing Director Jorge San Miguel, then a partner of Ferraiuoli LLC, represented Ambac as outside counsel. Both Rothschild and Mr. San Miguel received numerous detailed privileged legal analyses and participated in legal discussions related to the Commonwealth and many of its instrumentalities, including COFINA and HTA, both of which are in Title III proceedings. This conflict implicates not only Rothschild and Ankura, but also extends to the Commonwealth's lawyers, including O'Melveny & Myers. Given the nature of Rothschild's engagement with the Commonwealth, Rothschild's knowledge may be legally imputed to O'Melveny. *See, e.g., North Pacifica, LLC v. City of Pacifica*, 335 F. Supp. 2d 1045 (N.D. Cal. 2004); *Cordy v. Sherwin-Williams Co.*, 156 F.R.D. 575 (D.N.J. 1994).

7. Rothschild and Ankura both recently entered into expanded advisory contracts with AAFAF. *See* "AAFAF Re-Signs Rothschild to Expanded \$15.7M Advisory Mandate,"

Reorg Research (July 20, 2017); “AAFAF signs Ankura to new \$6.4M Advisory Contract,” *Reorg Research* (July 27, 2017). Yet, in keeping with common practice in the industry—and in a spirit of pragmatism and cooperation—Ambac has not stood on these conflicts and denied the Commonwealth its choice of advisors, though it would be within its rights to do so. Regrettably, the Governor and AAFAF have chosen a different approach. Instead, the Governor and AAFAF are strategically standing on their purported conflict to deliberately impede COFINA creditors’ ability to retain an agent of their choosing in this critical stage of these cases. This is just the latest instance in a pattern of interference by the Commonwealth with COFINA’s creditors’ rights, in violation of the Commonwealth’s covenants under COFINA’s enabling legislation and governing documents.

8. Although Ambac is not objecting to the protocol at this time, it is deeply troubled by the Governor’s and the Commonwealth’s actions. Accordingly, Ambac expressly reserves the right to renew its objection to the protocol in its entirety for the reasons stated in its objection to the Initial Protocol Motion (Dkt. No. 375) when the COFINA agent and counsel are identified. Ambac further reserves all rights with respect to the Governor’s and AAFAF’s deliberate interference with COFINA creditors’ rights in connection with this matter, including the right to seek disqualification of Rothschild and Ankura (particularly in light of their recently announced expanded advisory roles), as well as O’Melveny, based on their knowledge, or presumed knowledge, of Ambac’s privileged and confidential information.

Dated: July 28, 2017
San Juan, Puerto Rico

FERRAIUOLI LLC

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case.

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